



Signed and Filed: October 10, 2012

THOMAS E. CARLSON U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re) Case No. 11-30859 TEC
11 LAKHNINDER SINGH,) Chapter 7
12)
13)
14 Debtor.)
PAUL S. KALRA,) Adv. Proc. No. 11-3104 TC
15 Plaintiff,)
16 vs.)
17 LAKHNINDER SINGH,)
18 Defendant.)
19 _____)

MEMORANDUM DECISION

The court held a trial in this action on April 11, 2012. Plaintiff Paul S. Kalra appeared *in pro per*. Raymond R. Miller appeared for Defendant Lakhninder Singh. The court finds for Defendant for the reasons stated below, which shall constitute the court's findings of fact and conclusions of law.

FACTS

Plaintiff Paul Kalra makes loans under the business name OnTime Financial. Defendant Lakhninder Singh operated a used car

1 lot under the business name San Leandro Motors. In late 2005 and
2 early 2006, Kalra made three separate \$50,000 loans to Singh.
3 Singh repaid the first loan, but did not fully repay the second and
4 third loans.

5 Each of the three loans was documented by a similar promissory
6 note (the Notes), which afforded Kalra a security agreement in the
7 titles to certain motor vehicles owned by Singh and listed in
8 attachments to the Notes. The Notes did not require Singh either
9 to surrender to Kalra possession of the vehicle titles, or to pay
10 to Kalra the proceeds of sale of the subject vehicles. In the
11 course of his business, Singh sold the vehicles in question and
12 used the proceeds of those sales to purchase replacement inventory.

13 Singh testified that he typically sold cars through
14 installment-sale contracts, under which he bore the risk of non-
15 payment by the purchaser. Singh testified that his business failed
16 because too many purchasers failed to repay, and because he was too
17 often unable to repossess and resell the car when the purchaser
18 defaulted.

19 Singh testified that he does not have records documenting the
20 disposition of each of the cars on his lot, because his business
21 office was burglarized and his office safe stolen. He testified
22 that he reported that theft to the police.

23 The Notes memorializing the second and third loans required
24 Singh to make the following monthly payments:

<u>Date</u>	<u>Second Loan</u>	<u>Third Loan</u>	<u>Total</u>
January 2006	\$8,400	-NA-	\$8,400
February 2006	8,400	8,400	16,800
March 2006	8,400	8,400	16,800

1	April 2006	8,400	8,400	16,800
2	May 2006	8,400	8,400	16,800
3	June 2006	8,400	8,400	16,800
4	<u>July 2006</u>	<u>-NA-</u>	<u>8,400</u>	<u>8,400</u>
5	Total	50,400	50,400	100,800

6 Singh actually made the following payments on the second and
 7 third loans (all of these payments were late, and none were
 8 specifically allocated to one loan or the other):

9	<u>Date</u>	<u>Amount</u>
10	January 2007	\$4,200
11	February 2007	4,200
12	March 2007	4,200
13	April 2007	4,200
14	May 2007	8,500 (two payments of \$4,250 each)
15	June 2007	4,250
16	August 2007	4,250
17	October 2007	4,200
18	<u>December 2007</u>	<u>4,200</u>
19	Total	42,200

20 Kalra obtained a state-court judgment against Singh in the
 21 amount of \$116,171 in May of 2008 (the Judgment). Singh filed a
 22 chapter 7 bankruptcy petition in this court in March of 2011.
 23 Kalra timely filed the current action seeking to deny Singh a
 24 discharge and to except the Judgment from discharge.

25 **DISCUSSION**

26 A. Claims under § 523(a)(2)

27 Kalra first contends that the Judgment should be excepted from
 28 discharge under section 523(a)(2) on the basis that Singh obtained

1 the loans without ever intending to repay them. The evidence does
2 not support this claim. It is undisputed that Singh fully repaid
3 the first loan. On the second and third loans, Singh made nine
4 partial payments over twelve months totaling 42 percent of the
5 principal amount of those loans. This record does not give rise to
6 an inference that Singh obtained the second and third loans without
7 intending to repay them.

8 B. Claims under §§ 523(a)(4) and (a)(6)

9 Kalra's second and third claims for relief relate to the
10 security agreement he was granted in the motor vehicle titles.
11 Kalra contends that the Judgment should be excepted from discharge
12 under section 523(a)(4), because Singh embezzled the proceeds of
13 sale of the subject vehicles by not paying those proceeds to Kalra.
14 Kalra contends that the Judgment should also be excepted from
15 discharge under section 523(a)(6), because the failure to pay sale
16 proceeds to Kalra constituted willful and malicious injury.

17 These claims are not supported by the evidence. The Notes do
18 not direct Singh to pay the proceeds of sale of the subject
19 vehicles to Kalra. The Notes instead contemplate that Singh can
20 use sale proceeds to buy new vehicles, which will constitute
21 replacement collateral. The Notes state in relevant part:

22 This note is secured by Automobile Titles pledged to
23 OnTime Financial Inc. (Holder) contained in Pool # SC-
24 137B with full recourse. Attached hereto as Exhibit "A"
25 is an itemized listing of the Titles contained in this
package. The Maker, at its expense shall provide good,
clean and marketable title. *The pledged title when sold
will be replaced by alternate titles of equivalent value.*

26 (Emphasis added).

27 Although there was no evidence that Singh ever provided Kalra
28 with a list of replacement titles, there was also no evidence that

1 Kalra ever asked for such a list. Nor did Kalra demand possession
2 of the titles shown on the lists attached to the Notes.

3 The Judgment should not be excepted from discharge under
4 sections 523(a)(4) or 523(a)(6), because Singh did not dispose of
5 the collateral or its proceeds in any manner prohibited by the
6 Notes.

7 C. Claims under §§ 727(a)(3) and (a)(5)

8 Kalra contends that Singh should not be granted a discharge,
9 because he has failed to preserve business records, and because he
10 is unable to explain his losses.

11 The first of these claims presents a close question. Singh
12 does not have copies of the installment sales contracts documenting
13 the sales of cars from his lot, and does not have profit and loss
14 statements or a ledger from which they could be reconstructed.
15 Singh testified that substantially all of his business records were
16 lost when his safe was stolen during a burglary of his office. He
17 testified that he reported that theft to the police. Kalra did not
18 introduce evidence that he ever asked for a copy of the police
19 report, that the police report did not exist, or any other evidence
20 indicating that the theft did not occur. I find for Singh on this
21 issue, because his testimony was not inherently incredible and
22 because Kalra did not rebut it in any way.

23 I find that Singh explained his losses adequately. He
24 testified that his business failed because he bore the credit risk
25 on cars he sold, and too many purchasers defaulted. This testimony
26 was not rebutted and is not inherently incredible, especially when
27 one considers that he ceased making all payments on the Notes in
28 2008, the year the Great Recession began.

1 **CONCLUSION**

2 Judgment will be entered for Defendant.

3 ****END OF MEMORANDUM DECISION****

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